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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : **Hon'ble Shri H.L. Dattu, CJ.**

Writ Petition No. 3392 OF 1993.

Petitioner Advani Oerlikon Ltd., (A Limited Company incorporated under Indian Companies Act), With the Registered Office at Block-D, Shivsagar Estate, Dr. Annie Besent Road, Bombay.
Plant at Industrial area, Birgaon, Raipur-M.P.

Vs.

Respondents

1. Regional Provident Fund Commissioner, 7th Race Course Road, Indore.

2 Shri V.K. Dheman, S/o. Not known, Enforcement Officer, Provident Fund Office, Tatya Para Chowk, Raipur – M.P.

Petition under Articles 226/227 of the Constitution of India.

Present: Shri Goutam Bhaduri, counsel for the petitioner.
Shri Pradeep Saksena, counsel for the respondents.

ORAL ORDER
(Passed on 20th April, 2007)

This matter arises under the provisions of Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter for brevity 'the Act').

(2) In this petition filed under Article 226 of the Constitution of India, the petitioner calls in question the correctness or otherwise of the order passed by the competent authority under the provisions of the Act in exercise of his power under Section 7-A of the Act quantifying a sum of Rs.2,10,955/- as the amount payable by the petitioner-company.

(3) Apart from other contentions, the primary ground urged by learned counsel for the petitioner in this writ petition is that the respondent-authority without affording reasonable opportunity of hearing to the petitioner has quantified the liability under the Act and, therefore, it is stated that the order passed by the respondent-authority is not only arbitrary but also in violation of

the principles of natural justice. In support of his contention, the learned counsel draws my attention to sub-Section (3) of Section 7-A of the Act.

(4) Learned counsel appearing for the respondents supports the impugned order passed by the respondent authorities.

(5) At the time of hearing of the petition, Shri Goutam Bhaduri, counsel for the petitioner would submit that one more opportunity may be afforded to the petitioner to substantiate its defence and further submits that in order to prove its bona fides the petitioner would deposit the entire amount quantified by the respondents.

(6) Sub-Section (3) of Section 7-A of the Act specifically states that before an order is passed under Section 7-A of the Act, the opposite party requires to be given a reasonable opportunity of hearing. Perusal of the order passed by the respondent-authority would clearly show that opportunity was given to the petitioner not only to plead his defence but also to substantiate the same. However, the petitioner did not make use of the opportunity given to it. Therefore, this is not one of those cases where an opportunity of hearing was not given to the petitioner, but a case where opportunity of hearing was given, but was not made use of it by the petitioner. Therefore, in principle, I cannot find fault with the impugned order, but in order to do substantial justice to the parties, if the impugned order is set aside, subject to the condition that the petitioner pays the entire quantified liability and a direction is issued to the Competent Authority under the Act to re-do the matter, no prejudice would be caused to the respondents. The respondents' learned counsel had no objection to the suggestion made by me at the time of hearing of the petition. Accordingly the following:

ORDER

i) Petition is disposed of. Impugned order is set aside.

ii) The respondent-authority is directed to give one more opportunity to the petitioner to substantiate its defence by issuing appropriate notice to the petitioner and pass appropriate orders in accordance with law.

iii) The petitioner is directed to deposit the amount quantified by the respondent-authority within two months' time from today, after deducting the amount it has already deposited.

(8) With these observations and directions, the writ petition is disposed of. Ordered accordingly.

Sd/-
Chief Justice